



1           7 Stalbrand informed Respondent that she and Kever had been living together for  
2 five years and were engaged to be married She advised Respondent that Kever had half-  
3 relatives; Respondent advised that they were not important

4           8 Respondent did not recognize that witnesses had not signed the Will

5           9 Respondent's practice was limited to trusts and estate planning and he had very  
6 little experience handling probates He had handled but a few informal probate matters and  
7 never handled a formal probate Unless simple, he would refer probate matters out of his  
8 office

9           10 Respondent believed that the Will was valid and submitted it for informal probate

10          11 Respondent charged a flat fee of \$2,000 to handle the informal probate

11          12 Respondent did not provide a written fee agreement

12          13 Stalbrand paid \$2,000 for the informal probate

13          14 Respondent attempted to file an Application for Informal Probate of the Will on  
14 or about June 2, 2005, but the Application was rejected by the Clerk's office because the Will  
15 lacked signatures The paperwork was submitted as a *pro per* litigant and did not reflect  
16 Respondent's appearance Respondent did not understand the significance of failing to  
17 notice his appearance as counsel of record in the informal probate proceedings

18          15 Respondent was advised by the Clerk's Office that the Will would need to be  
19 formally probated

20          16 If probated formally, Respondent would have referred Stalbrand to another  
21 attorney

22          17 Respondent met with Stalbrand shortly after the Application for Informal Probate  
23 was rejected and advised her that the application had been rejected for lack of witnesses

24          18 Although the testimony was in dispute with respect to the critical events  
25 surrounding this meeting, there is no question that Stalbrand, in Respondent's presence and  
26 with his knowledge and assistance, added two witness names, addresses and signatures to the  
27 Will Stalbrand claims that Respondent told her to add the information, and Respondent

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1 claims that Stalbrand did so on her own volition, although he took "full responsibility for  
2 having thoughts and intentions and leading and saying" that Stalbrand's objectives would be  
3 met if there were witnesses, and for prompting Stalbrand to add witnesses <sup>1</sup>

4 19 When Stalbrand was adding the witness names to the Will, Respondent told her  
5 to make the signatures look different

6 20 Respondent knew that the added "witnesses" did not witness Kever's signature

7 21 On or about June 15, 2005, Respondent submitted the altered Will with the  
8 Maricopa County Superior Court, along with other pleadings necessary to commence the  
9 informal probate of the Will in *In the Matter of the Estate of Charles Christian Kever*,  
10 PB20005-001845 Respondent did so knowing that the instrument was altered

11 22 In the Application for the informal probate, Respondent averred that Kever had  
12 no spouse, children or heirs Respondent was aware that Kever had half relatives

13 23 Respondent believed, at the time, that the Will was valid and could have been  
14 formally probated However, he lacked a legal understanding of the validity of the will at  
15 the time

16 24 On June 15, 2005, Stalbrand was appointed the Personal Representative of  
17 Kever's estate

18 25 Michale Watts, Kever's cousin, and Ole Charles Kever, Kever's half brother,  
19 retained attorney James Polese to investigate the bona fides of the Will Polese sent a letter,  
20 dated June 27, 2005, to Stalbrand requesting a written statement regarding the events  
21 surrounding the execution of the Will, interviews with the two "witnesses," and an  
22 explanation for the claim that Kever had no spouse, children, or heirs

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25 <sup>1</sup>Given my conclusions and recommendation, I need not resolve the factual question of who  
26 initiated the scheme to add the witnesses Both Respondent and Ms Stalbrand had motive to  
27 fabricate on this issue Respondent because his license is at risk, Ms Stalbrand because she was  
28 suing Respondent in the Superior Court. Under either scenario, the evidence reveals that Respondent  
conspired to commit a felony

1           26 Polese filed a Demand for Notice in the probate matter, PB2005-001845, on or  
2 about June 27, 2005

3           27 Stalbrand presented the letter from Polese to Respondent on or about June 29,  
4 2005

5           28 By letter dated July 7, 2005, Respondent informed Polese that he represented  
6 Stalbrand, but would be on vacation and would respond to the letter upon his return at the  
7 end of the month

8           29 On or about August 11, 2005, Respondent created notes to his file which reflected  
9 his knowledge that the decedent had a cousin and which memorialized, in part, the story  
10 created about the "witnesses," which Respondent knew was not true These notes were not  
11 submitted or used in subsequent proceedings but were part of the file turned over to  
12 successor counsel

13           30 On or about August 22, 2005, Respondent sent a letter to Polese advising that the  
14 execution of the Will was "awkward" because it had been signed by Keever on two different  
15 dates, the second time in front of a notary Respondent stated that he was unaware of  
16 anything that would invalidate the Will

17           31 Respondent was concerned that the false "witnesses" scheme would be  
18 uncovered

19           32 On or about September 14, 2005, Polese, by letter, asked Respondent for contact  
20 information for the two "witnesses," and asked to interview Stalbrand

21           33 On or about September 19, 2005, Respondent, by letter, agreed to Stalbrand's  
22 interview and stated that his client had no current contact information for the "witnesses"  
23 other than as stated in the Will

24           34 On or about December 2, 2005, Polese, by letter, advised Respondent that he  
25 wanted to interview Stalbrand under oath prior to the holidays

26           35 Respondent and Polese had telephone conversations on January 25 and 26, 2006  
27 During these conversations, Respondent admitted that the two witnesses had not actually  
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1 witnessed Keever's execution of the Will and that Stalbrand had entered the witnesses names  
2 onto the Will in front of him Prior to these telephone conferences, Respondent believed the  
3 Will to be valid After speaking with Polese, Respondent believed that the Will was not  
4 valid

5 36 On our about January 26, 2006, Polese sent a letter to Respondent advising him  
6 that his client must file a motion advising that the document is not a valid Will, that the  
7 power of attorney must be revoked and that the estate should be administered as though the  
8 decedent died intestate

9 37 Respondent concluded that Polese was correct, prepared the necessary documents  
10 and consulted with Stalbrand about the need to file the documents

11 38 Although there was conflicting testimony about when Respondent advised Ms  
12 Stalbrand to retain different counsel, Respondent filed a Notice of Appearance and a  
13 Stipulation to Set Aside with the Court after the conflict between Respondent and Stalbrand  
14 arose Respondent felt pressure to accomplish the set aside as soon as possible Stalbrand  
15 was thereafter removed as personal representative

16 39 On or about February 10, 2006, Respondent self-reported his conduct to the State  
17 Bar His self-report admitted to ethical violations but, in some ways, minimized his conduct  
18 The self-report also contained false information - specifically, that he "suspected" that the  
19 "witnesses" had not witnessed Keever sign the will when in fact he knew so Additionally,  
20 Respondent falsely stated that Stalbrand had advised him that Keever had no family In fact,  
21 Stalbrand told Respondent that Keever had half-siblings and cousins Respondent self  
22 reported to the bar only because the ethical impropriety had come to light

23 40 Respondent advised and assisted Ms Stalbrand with the distribution of assets  
24 while she was the estate's personal representative After Ms Stalbrand was removed as  
25 personal representative, she re-paid \$85,000 to the estate due to her distribution of estate  
26 assets during the time she believed herself to be the sole beneficiary

41 Respondent paid \$15,000 to Kever's estate as settlement for any claims the estate  
had against him, and refunded his \$2,000 fee to Stalbrand

42 Stalbrand sued Respondent alleging legal malpractice for withdrawing the Will from informal probate and allowing the estate to be administered as an intestate estate. Stalbrand alleges in the lawsuit that the Will was valid. At the time of the hearing, Respondent had offered to settle the lawsuit for \$100,000.

## CONCLUSIONS OF LAW

1 By clear and convincing evidence, I find that Respondent violated ER 1 1 (failure to provide competent representation), ER 1 2(d) (assisting client in dishonest conduct), ER 1 5 (b) (lack of written fee agreement), ER 1 7 (continued representation despite conflict of interest),<sup>2</sup> ER 3 3 (candor to the tribunal), ER 8 4 (c) (knowingly engaging in conduct involving dishonesty, deceit, or misrepresentation),<sup>3</sup> ER 8 4(d) (conduct prejudicial to the administration of justice)

2 The State Bar has failed to prove, by clear and convincing evidence, a violation of  
ER 1.4 (communication)

## RECOMMENDATION

The purpose of lawyer discipline is not to punish the lawyer, but to protect the public and deter future misconduct. *In re Fioramonti*, 176 Ariz. 182, 187, 859 P.2d 1315, 1320 (1993). It is also the objective of lawyer discipline to protect the profession and the administration of justice. *In re Neville*, 147 Ariz. 106, 708 P.2d 1297 (1985). Yet another purpose is to instill public confidence in the bar's integrity. *Matter of Horwitz*, 180 Ariz. 20,

<sup>2</sup>Respondent objected to the consideration of this allegation because it was not specifically pled in ¶ 58 of the complaint (listing Ethical Rules by number). However, it was clearly pled in ¶57 of the complaint (listing the alleged violations in narrative form). Respondent had sufficient notice of this allegation.

<sup>3</sup>I do not find that the ER 8 4 (c) violation was negligent. Whether or not Respondent believed no harm would come from dishonest conduct misses the point. Respondent knowingly presented an altered instrument to the tribunal.

1 29, 881 P 2d 352, 361 (1994)

2 In imposing discipline, it is appropriate to consider the facts of the case, the American  
3 Bar Association's Standards for Imposing Lawyer Sanctions ("Standards") and the  
4 proportionality of discipline imposed in analogous cases *Matter of Bowen*, 178 Ariz 283,  
5 286, 872 P 2d 1235, 1238 (1994)

6 ABA STANDARDS

7 1 Ethical duty violated

8 Respondent violated his duties to a client, to the legal system, and to the public

9 The duty to the client is the most important duty a lawyer has Respondent failed to  
10 avoid a conflict of interest and was incompetent in his representation Suspension is  
11 generally appropriate when a lawyer engages in a pattern of neglect and causes injury to a  
12 client ABA Std § 4 42 A reprimand (censure) is generally appropriate when a lawyer  
13 demonstrates a failure to understand relevant legal doctrines or procedures and causes injury  
14 to a client ABA Std § 4 43

15 With respect to a violation of the duty to the legal system, disbarment is generally  
16 appropriate when a lawyer submits a false document to the court with the intent to deceive  
17 the court, and causes serious or potentially serious injury to a party, or a significant or  
18 potentially significant adverse effect on the legal proceedings ABA Std § 6 11  
19 Suspension, however, is appropriate when the lawyer knows that false documents are being  
20 submitted to the Court, takes no remedial action, and causes injury or potential injury to a  
21 party or causes an adverse or potentially adverse effect on the legal proceeding ABA Std  
22 § 6 12

23 Violations owed to the public involve a failure to maintain personal integrity  
24 Disbarment is appropriate when the lawyer engages in serious criminal conduct which  
25 includes an intentional interference with the administration of justice, misrepresentation,  
26 fraud, or a conspiracy to so commit ABA Std §5 11 Suspension is generally appropriate  
27 when a lawyer engages in criminal conduct other than as described in ABA Std §5 11, which  
28

1 is a serious reflection on the lawyers fitness to practice ABA Std § 5 12 Reprimand is  
2 generally appropriate if the lawyer engages in other conduct involving dishonesty, deceit,  
3 fraud, or misrepresentation that adversely affects an attorney's fitness to practice law ABA  
4 Std § 5 13

5 The sanction imposed should be consistent with the most serious misconduct  
6 *Standards*, p 6 ERs 3.3 and 8 4( c) are the most serious based on these facts Respondent  
7 *intentionally submitted an altered instrument with the Court intending the Court to rely on*  
8 *it*

9 2 The lawyer's mental state

10 Respondent's actions were knowing He knowingly filed a document he knew to be  
11 false with the Court intending the Court to rely on it as a bona fide document to allow the  
12 informal probate of the Will even though the Will was not entitled to informal probate  
13 Respondent believed at the time that the Will was otherwise valid and I do not find an  
14 intentional attempt to cause the administration of an invalid Will Rather, Respondent sought  
15 a short cut

16 3 Extent of injury

17 Here, there was actual financial injury to Stalbrand and to Keever's family Stalbrand  
18 incurred additional attorney's fees and was required to re-pay the estate for removed assets  
19 Assuming that the Will was valid as alleged in her lawsuit against Respondent, Stalbrand lost  
20 the benefits she would have been entitled to under the Will Keever's family had to retain  
21 counsel to investigate the execution of the Will There was also an injury to the legal process  
22 in that a fraud was committed on the Court

23 4 Aggravating and Mitigation Factors

24 The following aggravating factors are present

25 9 22(a) Prior disciplinary offenses Both involve unrelated conduct and are  
26 approximately eight years old so they are not given much weight



1           9 22( c) Pattern of misconduct Respondent committed multiple ethical violations in  
2 the course of this representation including complicity in the alteration of an instrument, filing  
3 the altered instrument, seeking to avoid discovery, and falsely reporting his conduct

4           9 22(f) Submission of false statements during the disciplinary process This is part  
5 of the pattern of misconduct and, therefore, is given no actual weight as it has been  
6 considered in connection with 9 22 (c)

7           9 22(i) Substantial experience in the practice of law

8           9 22(k) Illegal conduct

9           The following mitigation factors are present

10          9 32(b) Absence of a dishonest or selfish motive The catalyst for the ethical  
11 improprieties was Respondent's misguided effort to accomplish, by artifice, what he believed  
12 could be validly accomplished otherwise The rest of the ethical violations flowed from this  
13 misguided effort

14          9 32 (d) Timely good faith effort to make restitution or to rectify consequences  
15 Whether or not the efforts were timely is questionable and, therefore, I have not given much  
16 weight to this factor

17          9 32 (e) Cooperative attitude toward disciplinary proceedings Respondent self-  
18 reported, admitted most of the violations in his Answer and sought to stipulate to uncontested  
19 facts during the hearing process, albeit late in the process I have not given much weight to  
20 this factor, however, because of the false statements in the initial self-report to the bar

21          9 32 (g) Character Respondent's character witnesses were credible and spoke well  
22 of Respondent's personal character

23          9 32 (k) Imposition of other penalties or sanctions <sup>4</sup>

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26           <sup>4</sup>This is somewhat speculative Respondent offered restitution to Ms Stalbrand and the  
27 matter is pending in Maricopa County Superior Court It appears that the matter will be resolved  
28 with Respondent making restitution to Ms Stalbrand funded by the sale of real property owned by  
Respondent

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1 filing in violation of A R S § 39-161 Relying on ABA Std § 5 11(b), and after  
2 acknowledging that disbarment was the presumptive sanction, the Commission found censure  
3 to be appropriate based on a proportionality analysis and significant mitigation presented <sup>5</sup>

4 *Matter of Garrison*, No 94-1053, considered an attorney complicit in the forged  
5 signature of a settlement check for the purposes of effecting the client's intent When the  
6 matter went awry, Respondent self-reported prior to a complaint being filed He was  
7 censured after the Commission determined a number of mitigating factors and no aggravating  
8 factors

9 *Matter of Gieszl*, No 03-1278, involved an attorney who fabricated documents as part  
10 of an ongoing effort to convince her client that a personal injury settlement had been reached  
11 when, in fact, no complaint had been filed and the statute of limitations had run Respondent  
12 had significant emotional and mental health problems during the relevant time frame and did  
13 not file a false instrument with the Court She received a one year suspension

14 The Respondent, in *In re Moak*, 205 Ariz 351, 71 P 3d 343 (2003), failed to disclose,  
15 during discovery, in motion practice, and in trial, pertinent information relating to his client's  
16 injuries causing the defendants, the judge and the jury to be misled about the cause of  
17 injuries The Court determined that Moak acted knowingly Once he accepted responsibility  
18 for his actions, Moak took steps to rectify the effects of his conduct on his clients After  
19 weighing aggravating and mitigating circumstances against the presumptive sanction of  
20 suspension, in particular additional charges against the Respondent revealing a pattern of  
21 misconduct, the Court suspended Moak for six months and a day

22 No pattern can be gleaned from these cases for this type of conduct The cases present  
23 a confusing patchwork of *sui generis* cases which do not make it possible to assess conduct  
24 except by considering the unique facts presented in each case Accordingly, while guided

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26 <sup>5</sup>Aggravation included dishonest or selfish motive, vulnerability of victim, and substantial  
27 experience in the practice of law, Mitigation included absence of prior disciplinary record,  
28 cooperative attitude to disciplinary process, character or reputation, imposition of other sanctions,  
and remorse

1 by these cases, none of the results are dispositive <sup>6</sup>

## 2 DISCUSSION OF APPROPRIATE SANCTION

3 The purposes of lawyer discipline include the need to deter the Respondent and other  
4 attorneys from engaging in similar unethical conduct. *In re Kleindienst*, 132 Ariz 95, 644  
5 P 2d 249 (1982), to instill public confidence in the bar's integrity, *Matter of Horwitz*, 180  
6 Ariz 20, 29, 881 P.2d 352, 362 (1994), and to maintain the integrity of the legal system *In*  
7 *re Fioramonti*, 176 Ariz 182, 859 P 2d 1315 (1993)

8 In the instant case, based upon the Respondent's testimony, demeanor and actions, it  
9 appears that there is no need to deter him personally - he has been profoundly affected by  
10 these proceedings and the consequences of his actions However, a meaningful sanction is  
11 required to instill public confidence in the bar's integrity and to maintain the integrity of the  
12 legal system

13 Respondent knowingly submitted an altered instrument with the Court with the intent  
14 to deceive the Court Respondent contends that the filing of the false document was intended  
15 to effectuate what he believed were the decedent's wishes <sup>7</sup> As noted in *Charles*, however,  
16 that belief does not justify the failure to maintain personal or systemic integrity

17 But for the independent investigation of the decedent's heirs, the Respondent would  
18 not have ameliorated his transgressions Moreover, when confronted with discovery, the  
19 Respondent failed to withdraw from the situation which created a greater harm to his client

20 Based upon the unique facts of this case, I believe that the Respondent's requested  
21 sanctions of censure and probation do not sufficiently account for the seriousness of the  
22 ethical violation On the other hand, the State Bar's request for a one year suspension seems

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25 <sup>6</sup>A review of the cases illustrates why the parties were unable to reach an agreement in this  
26 matter Respondent and the State Bar could each credibly rely on the cases which supported their  
26 respective positions on the appropriate sanction

27 <sup>7</sup>Specifically, Respondent testified that, in connection with the need to formally probate that  
28 the will, that "in my mind - the ends were going to meet at the same result."

1 unduly harsh under these circumstances

2 Accordingly, it is recommended that the Respondent be suspended for 90 days and,  
3 upon reinstatement, be placed on probation with appropriate conditions including, but not  
4 limited to, 15 hours of continuing legal education in probate law for each year that he is on  
5 probation

6  
7 DATED this 31<sup>st</sup> day of August, 2007

8  
9 Martin Lieberman /cs  
10 Martin Lieberman  
Hearing Officer 7W

11  
12 Copies of the foregoing mailed  
13 this 4<sup>th</sup> day of August, 2007, to  
*September*

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